

Report of the Director of City Strategy

Community Stadium

Summary

1. The purpose of the report is to update Members on the progress made following the meeting of the Staffing and Urgency Committee on the 21st May 2008 where a report titled 'Community Stadium' was discussed. Is it also seeking Member approval for the council to make a loan to York City Football Club (YCFC) to enable it to pay off the loan made to it by the Football Foundation (FF).
2. The proposals to make this loan are integral to achieving the overall objective of a new community stadium which is a short term imperative identified in the Corporate Strategy 2007-2011. In the proposals the new stadium would be delivered as a partnership between the council, YCFC and York Knights Rugby League Club, the former two parties putting equity into the project and the latter a non-equity partner. The proposed stadium would therefore be under a joint management board arrangement with detailed terms yet to be agreed.

Background

3. At its meeting on the 21st May 2008 the Staffing and Urgency Committee considered a report from the Director of Resources and Deputy Chief Executive titled 'Community Stadium'. This set out a proposed way forward towards delivering a new community stadium for York and suggested further steps that the Council could take in order to help bring about a community stadium and to support York City Football Club in the period of transition from their current stadium to the new one. The resolution of the committee was as follows:
 - i. To agree in principle the commitment of the majority of the proceeds from the sale of Huntington Stadium (along with those generated from the sale of Bootham Crescent) to fund a community stadium subject to consultation with the residents and users of Huntington Stadium;
 - ii. That it be agreed that the first £1m of the sale value of Huntington Stadium be utilised to relocate the athletics facilities at the stadium to

another site with suitable viewing facilities;

- iii. That it be agreed that £200k of the Council's LABGI reward money be allocated to fund programme management to support the development of, and generation of funds for, a new Community Stadium;
 - iv. That officers be instructed to discuss with the external funders the proposal that dedicated council planning and development officer time to the value of £100-£150k be committed to work in support of the sales of the existing stadia, the provision of the new community stadium and the new athletics facility;
 - v. That it be agreed that the Council takes over the £2.1m FF loan from YCFC and repays it securing it against Bootham Crescent, subject to approval from YCFC and the guaranteeing of a Football Stadia Improvement Fund (FSIF) grant of £2m which will be paid during the construction of the new community stadium, pending an independent financial appraisal being undertaken of risks to the taxpayers' interests and the short and medium term revenue viability of YCFC and the York Knights Rugby League Club being satisfactorily demonstrated.
3. Following the above, and with particular reference to paragraph 2(v) above, a report was subsequently commissioned from Deloitte to comment on key aspects of YCFC's annual financial projections for the period up to 30th June 2012, summarise key issues and risks associated with the project, and provide a high level illustration of how other local authorities have been involved in new stadium development in the UK during the past 10 years.

Key Findings of the Deloitte report

4. The key findings are set out in the executive summary to the report. These may be further summarised as:
- The majority of football clubs in the top five tiers of English football do not generate net profits. [REDACTED]
 - [REDACTED]
 - The period projected forward is 2008/09 – 2011/12 [REDACTED] This is the period during which a new community stadium would be delivered
 - [REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- The projections assume that YCFC remain in the Conference throughout the period projected which is consistent with their recent on-pitch performance
- Deloitte considers that there are potential revenue upsides over and above the assumptions included in the projections for example in respect of cup runs in any of the three cup competitions
- [REDACTED]
- Deloitte considers the projections and the assumptions upon which they are based to be consistent with recent actual financial results and management plans for the future as disclosed to them
- Deloitte did not investigate issues around the value of Bootham Crescent or the number and value of current calls/loans secured against the asset

[REDACTED]

[REDACTED]

Discussion

5. The council has determined that the delivery of a community stadium is one of its "Corporate Imperatives" within the Corporate Strategy 2007-2011. Active York's 'Sport and Active Leisure Strategy' also recognises a need for a community stadium (this is expanded further under the 'Corporate Priorities' heading, paragraph 12).
6. In order for CYC to deliver a community stadium it would need to work in partnership with YCFC who would offer equity in the form of [REDACTED] [REDACTED] (Although YCFC does not own the freehold to the Bootham Crescent ground, [REDACTED] [REDACTED] Additionally YCFC would also bring the necessary revenue into the community stadium once it was built. Consequently a partnership between CYC and the football club is paramount for delivering a community stadium and that YCFC continues to be a viable and going concern over the period of delivery.
7. However in order for YCFC to receive the FSIF grant they must achieve specific milestones towards identifying and delivering a new stadium. [REDACTED] [REDACTED]
8. The 21st May 2008 report gave an option for supporting YCFC over the next four years by removing the immediate need to pay interest on the FF loan and instead replacing this with an equivalent loan from the council which would be secured against the value of Bootham Crescent. [REDACTED] [REDACTED]
9. If agreed, such a loan would be subject to a number of conditions (below) and would be certified by the Monitoring Officer and the Section 151 Officer before the advancement of the loan monies:
 - Further financial investigation into JMP financial accounts, the relationship between JMP and YCFC and Bootham Crescent Holdings and the number and value of calls on the capital receipt
 - In order to ensure any loan made by CYC is repaid it will need to be secured as a charge against Bootham Crescent and such a charge would need to take precedence over all other calls on the asset in the same way that the FF loan does at present. If officers are unable to fully secure the loan against the freehold of Bootham Crescent then it is recommended that a loan would not be advanced on these terms.
 - If Option 1 is chosen, the YCFC would repay the loan and rolled up interest at [REDACTED]

- If Option 2 is chosen, the total sum loaned would be charged [REDACTED] and the rolled up interest charged at [REDACTED]
 - Obtain written confirmation that that the FF guarantee that YCFC would receive a £2m FSIF grant to be applied to the development of a new community stadium
 - A legal agreement to be obtained from YCFC that they will work in partnership with CYC (and potentially other partners) to deliver a community stadium by contributing equity [REDACTED]
 - From the sale of Bootham Crescent a minimum of the £2m FSIF grant and any residual sale value, after repaying the CYC loan and the rolled up interest, must be put into the new community stadium.
10. The value of Bootham Crescent, if developed for housing, is currently estimated at [REDACTED] depending upon the percentage of affordable housing required. The highest estimate has been calculated on the basis that 25% of the housing stock would be affordable housing. [REDACTED]
11. Members must be aware that in the event of the community stadium project failing to deliver a new stadium within the four year timescale or indeed at all, the only way of the council loan plus interest being repaid, is through the sale of Bootham Crescent, provided that the proceeds of sale are sufficient, which would almost certainly mean the end of football at the ground.

Corporate Priorities

12. The provision of a new community stadium for the city is a 'Corporate Imperative' identified in the Corporate Strategy 2007-2011. It is also identified in Active York's 'Sport and Active Leisure Strategy' which was signed up to at the Leisure and Heritage EMAP in June 2005. The facilities section of this strategy was updated in May 2007 and makes the following statement about needing a new stadium:

'Professional Sports Stadium

Both York City and York Knights urgently need a modern professional stadium that meets league and safety standards and can attract investors, players and spectators. This facility must cater for the full sports development continuum. It must be accessible by the community as a training and participation venue and as the route to excellence. This venue must be viewed by the professional clubs and the community at large as a Citywide, multi sport facility.'

Options

13. Members have a number of options in considering this report.
14. **Option 1** is for CYC to proceed with a loan to the football club to replace the existing £2.1 million FF loan. YCFC will repay the loan and rolled up interest to CYC upon the sale of Bootham Crescent when a new community stadium is provided by 2012. The total amount owing to the council at the end of the four year period would be [REDACTED]. Whilst the loan would be secured against the existing football ground it can only realistically be repaid from the sale of the ground and repayment is therefore dependant on the success of the community stadium project or almost certainly on the ending of football at Bootham Crescent without a new stadium. [REDACTED]
[REDACTED]
15. **Option 2** is to service YCFC's existing FF loan. This would see the council paying the interest due on the FF loan of [REDACTED] per annum. This would mean that the total liability to the council, built up over the 4 year period, would be approximately [REDACTED] including rolled up interest. The Council would have its advance of interest payable repaid when Bootham Crescent is sold. The risk with this option is that the Council would not be able to secure first charge on the ground meaning that the first [REDACTED] of sale value would go toward the repayment of the FF loan before the Council could call on the receipt to settle its loan. Additionally it could negatively effect future partnership working as the Member decision made on 21st May 2008 has led to the expectation that CYC would take on the loan.
16. **Option 3** is to not provide a loan to YCFC which will mean that further investment in the club will be required to pay the ongoing interest to the FF. [REDACTED]. If the football club goes out of business or is run on a less successful basis in terms of its ongoing revenue then a community stadium may not be deliverable without significant council support in terms of both revenue and capital. Clearly without detailed knowledge of any future outcome for the football club under this option it is not possible to predict any likely required council investment to deliver and run a community stadium.
17. If Members decide not to provide a loan to YCFC then there may be other options regarding the provision of a community stadium in York. It is however outside the scope of this report to investigate these or to determine whether any other option is viable. For example officers could investigate whether it is a viable option for CYC to acquire the freehold of Bootham Crescent and rent it back to YCFC pending the completion of the new Community Stadium. At this stage no work has been carried out on the advantages or the disadvantages of such an option and any necessary work would put significant time delay into the decision making process. [REDACTED]
[REDACTED].

Without the participation of YCFC both in terms of capital investment and ongoing revenue, it is considered unlikely that the council would be in a position to provide a community stadium based on its current financial position.

Implications

18. Financial -

- Due to the complexity of the relationships between parties there are a number of questions that need answering before the loan can be advanced to YCFC. These questions centre primarily around the financial standing of JMP and the legal and financial relationship between JMP, YCFC and Bootham Crescent Holdings (BCH). At this stage no work has been undertaken to understand the financial and legal relationship that exist between JMP, YCFC and BCH nor has any work been conducted into the financial standings of JMP. External advice is currently being sought in order to fully understand the risks and implications involved, until such time as the results of such work are known and analysed officers are not in a position to advise on these specific issues.

- The advancement of the loan to the YCFC would be subject to it being securitised against Bootham Crescent. Under Option 1 the total monies owed to the Council at the end of the period would be [REDACTED]. The ground would therefore need to be of sufficient saleable value to cover the value of the loan. The current value of the ground at [REDACTED] is on the basis of 25% affordable housing based on the planning application submitted in 2002 which would be sufficient to cover the loan. However it should be noted that planning permission has not yet been awarded. [REDACTED]
[REDACTED]

- The 2007 Statement of Recommended Practice (SORP) required for Statement of Accounts, by section 21(2) of the Local Government Act 2003 makes specific reference to loans of the type being considered. It allows local authorities to make loans for policy reasons rather than as financial instruments. The legislation is however relatively clear that the council is not able to finance such a loan from long term borrowing. Any loan would therefore need to be from the council's cash balances and unless the council were prepared to subsidise the loan the level of interest charged would need to be set at the level that the council could expect to earn from investing the cash on the money markets.

19. Legal -

- Under Section 2 of the Local Government Act 2000 the council has the power to do anything which they consider likely to achieve the promotion or improvement of the economic, environmental or social well-being of its area. This power is wide ranging and can cover incurring expenditure, giving financial assistance to any person and providing staff, goods, services or accommodation to any person. In principle this would be wide enough to cover the making of the loan to YCFC. The Office of the Deputy Prime


Minister (ODPM) Guidance recognises the making of the loan as something which can be done under Section 2. However the council must be able to demonstrate that it has addressed the question of the benefit that this would bring. The council has addressed the provision of a new stadium as a corporate imperative and therefore this is likely to meet this criteria. The loan to YCFC is, in effect, a means to an end as officer advice is that the survival of YCFC is crucial to the delivery of the community stadium. In addition the council would, in exercising its powers under this section, be required to consider its Community Strategy and also take into account the ODPM Guidance.


- The power under Section 2 is limited to the extent that it does not enable a Local Authority to do anything which it is unable to do by virtue of any prohibition or restriction or limitation on its powers contained in the any enactment (whenever passed or made). It will be necessary in this context to look at the powers contained in the Local Authorities (Land) Act 1963.
- Section 3 of the Local Authorities (Land) Act 1963 gives power to an Authority for the benefit or improvement of their area to advance money to any person for the purpose of enabling him to acquire land; or to erect any building or carry out any work on land. Although the immediate purpose of the loan is to repay an existing loan, that original loan appears to have been for the acquisition of an interest in land. Further in the context of the wider project the objective would be the acquisition of the land and the erection of buildings on that land. However, the legislation imposes certain restrictions as follows:
 - a) It must be secured by a mortgage of the land in respect of which the advance is made
 - b) The advance shall not exceed nine tenths of the value of the land
 - c) Interest is to be paid at a rate not less than one quarter per cent greater than that fixed by the treasury in respect of loans to local authorities made on the relevant date
 - d) The mortgage deed securing the advance must provide for repayment within 30 years either in instalments of principal or by an annuity of principal and interest combined.
- It is recommended that the loan itself be structured in such a way as to make it conditional upon YCFC's participation in the community stadium project and that the loan shall be repayable in full including interest on the completion of the community stadium. This may be achieved through the loan agreement itself (please see paragraph 10 for a list of loan conditions).
- In any situation where a public authority provides financial support for a private body then this will potentially constitute unlawful state aid under Article 87 of the EC Treaty. However, there are exemptions, one of which is the 'de minimis' exemption which provides that aid below a certain figure (£158k at current exchange rates), over a three year rolling period, would not be considered to be state aid in this context. The actual amount of aid in this case will be the difference between the interest charged and that which YCFC would have paid for the same loan at commercial rates. It is thought

that this would fall within the 'de minimis' range but this will need to be confirmed.

20. **Human Resources** - There are no implications
21. **Equalities** - There are no implications
22. **Crime and Disorder** - There are no implications
23. **Property** - There are clearly property implications if the sale of Huntington Stadium is to go ahead although at this stage they are not significant beyond the resolutions of the report of the 21st May 2008.
24. **Other** - There are no other implications


Risk Management

25. There are a number of significant risks involved in the project and these were set out in the 21st May report. These are:
 - a) The land values of Bootham Crescent and Huntington Stadium may vary and these assets form the basis of the future capital to finance the new stadium. The value of Bootham Stadium may be insufficient to cover the repayment of the loan advance
 - b) 
 - c) Neither Bootham Crescent nor Huntington Stadium have planning permission for anything other than their existing use.
 - d) If Option 3 is chosen then the FF may, at any point, request for the loan to be paid back
 - e) To ensure that CYC get the full loan and the rolled up interest back, the Bootham Crescent site may have to be sold and this could therefore lead to the closure of the football club
 - f) If Option 2 is chosen CYC would not be the first call on the asset
 - g) No alternative site has yet been identified to build the new community stadium and any such site would require planning permission for a stadium
 - h) Because of the length of time to deliver a new stadium the associated build costs may vary

- i) Design issues may occur
- j) The stadium would be delivered in partnership with YCFC and York Knights Rugby League Club and difficulties may be encountered in working in partnership
- k) The scope, funding and workings of the future stadium management need to be agreed and formalised
- l) 

Recommendations

23 Members are asked to agree the following recommendations:

- a) The Council makes a loan of £2.1m to YCFC to replace the existing loan of £2.1m made by the Football Foundation in line with the conditions set out in paragraphs 9 and 10 and following the outcome of the work set out in paragraph 18 bullet point 1.
- b) The interest payable on the loan is set at  reflecting the likely return the council would achieve if invested on the money markets
- c) The interest is payable with the balance of the loan at the end of the period projected in June 2012. During this period the interest will be compounded
- d) The council loan is subject to a charge on the Bootham Crescent ground and such a charge taking precedent over all other calls on the asset.

Contact Details

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Report Approved

Date 8/7/08

Specialist Implications Officer(s) *List information for all*

Implication ie Financial

Implication ie Legal

Name

Name

Title

Title

Tel No.

Tel No.

Wards Affected: *List wards or tick box to indicate all*

All

For further information please contact the author of the report

Background Papers:

- Community Stadium report to Staffing and Urgency Committee 21st May 2008
- Staff and Urgency Committee Meeting 21st May 2008 Minutes
- Deloitte report on Community Stadium for CYC 20th June 2008
- A letter received from Walker Morris Legal advisors entitled 'Issues in relation to a proposed loan by City of York Council to York City Football Club Limited ' dated 27 June 2008.
- Active York's 'Sport and Active Leisure Strategy'

Annexes

None